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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 NATIONAL CASA ASSOCIATION,

10 Petitioner,

11 v.

12 UNCOMMON BOND INC.,

13 Respondent.

Case No. C21-1511-RSM-SKV

ORDER GRANTING MOTION FOR
ALTERNATIVE SERVICE

14 INTRODUCTION

15 This matter comes before the Court on Petitioner National CASA Association d/b/a
16 National CASA/GAL Association for Children (National CASA)'s *Ex Parte* Motion for
17 Alternative Service. Dkt. 4. Respondent unCommonBond Inc. d/b/a 3dASAP Promotional
18 Solutions (3dASAP) has not yet appeared in this matter. The Court, for the reasons set forth
19 below, GRANTS Petitioner's motion for alternative service.

20 BACKGROUND

21 National CASA is a Washington public benefit corporation with its principal place of
22 business in Seattle, Washington. Dkt. 1, ¶1. 3dASAP is a Texas corporation with its principal
23 place of business in the Austin, Texas area. *Id.*, ¶2. Glenda Pittard is 3dASAP's sole officer and

1 director and its registered agent, with a registered office located at 4101 Dauphine Drive, Austin,
2 Texas (the “Registered Office”). Dkt. 5, ¶3, Exs. 1-3. 3dASAP is not registered to do business
3 in Washington, has not appointed a Washington registered agent, and does not have a place of
4 business in Washington. *Id.*, ¶6.

5 National CASA and 3dASAP are parties to a Business Transference Agreement for
6 Online Store ShopCASA (the “Agreement”). Dkt. 1, ¶8; Dkt. 1-1. Under the Agreement,
7 National CASA transferred all business acts and responsibilities for the ShopCASA e-commerce
8 site, which offers CASA-branded items, to 3dASAP. *Id.* The Agreement includes a binding
9 arbitration clause, requiring arbitration of disputes in accordance with the rules of Judicial
10 Arbitration and Mediation Services, Inc. (JAMS). Dkt. 1-1 at § 5.8; Dkt. 5, ¶6.

11 National CASA alleges multiple material breaches of the Agreement by 3dASAP, also
12 violating separate license and associated brand guidelines, federal trademark law, and
13 Washington’s Consumer Protection Act. *See* Dkt. 1. On May 12, 2021, pursuant to the
14 Agreement, National CASA provided 3dASAP with a sixty-day formal notice of breach and
15 opportunity to cure. *Id.*, ¶¶10-11. National CASA sent the notice via certified mail to the
16 address for 3dASAP provided in the Agreement – 15503 Patricia Street, Austin, Texas (the
17 “Patricia Street Address”) – and to the address listed on the “shopcasa.org” website – 1904 Main
18 Street, Cedar Park, Texas (the “Main Street Address”) – and emailed the notice to Ms. Pittard at
19 glenda.pittard@3dASAP.com, the email address previously used by National CASA to contact
20 Ms. Pittard. Dkt. 5, ¶5; Dkt. 1-1. The letters were not returned undelivered and the email did not
21 “bounce back” as undeliverable. Dkt. 5, ¶5. 3dASAP did not respond to the notice. Dkt. 1, ¶12;
22 Dkt. 5, ¶¶10-11.

1 National CASA prepared an Arbitration Demand and, because JAMS requires proof of
2 service of the demand before commencing an arbitration proceeding, secured a process server to
3 serve 3dASAP. Dkt. 5, ¶6. On August 12, 2021, the process server attempted to personally
4 serve the Arbitration Demand on 3dASAP via its registered agent, Ms. Pittard, at the Registered
5 Office. *Id.*, ¶7, Ex. 4. In another attempt two days later, the process server was told by a
6 resident at the address that Ms. Pittard resided there, but was not available because she was on
7 vacation and “not due back for about a month and a half.” *Id.* The process server thereafter
8 attempted to personally serve Ms. Pittard at the Registered Office on five additional occasions
9 between the 11th and 21st of September 2021. *Id.*

10 In October 2021, National CASA retained an investigator, Robert Agnew, to locate
11 current addresses for Ms. Pittard and 3dASAP. *Id.*, ¶8; Dkt. 6, ¶3. Mr. Agnew determined that
12 the Registered Office address is Ms. Pittard’s current and private residential address and that she
13 also spends a significant amount of time, for extended periods, in San Miguel de Cozumel,
14 Mexico. Dkt. 6, ¶¶6-8. Mr. Agnew also determined that Ms. Pittard had sold the Patricia Street
15 Address, that another address previously associated with Ms. Pittard and 3dASAP was outdated,
16 and that the Main Street Address is a private residence associated with Stephanie Stewart, who
17 may be Ms. Pittard’s business partner. *Id.* A search by counsel for information about Ms.
18 Stewart did not reveal her title or whether she had authority to accept service of process. Dkt. 5,
19 ¶10.

20 National CASA filed a Petition to Compel Arbitration in this Court on November 8,
21 2021. Dkt. 1. It engaged a process server to serve the Petition and Summons on Ms. Pittard at
22 the Registered Office address. Dkt. 5, ¶11. On November 11, 2021, the process server was told
23 by a resident at that address that Ms. Pittard was out of the country and “probably will not return

1 for a while.” Dkt. 7. On further investigation, Mr. Agnew found social media posts dated in
2 October 2021 and suggesting that, as of that date and continuing through at least November 18,
3 2021, Ms. Pittard was still in the Cozumel area of Mexico. Dkt. 6, ¶9, Exs. 1-3.

4 DISCUSSION

5 A federal court lacks jurisdiction over a defendant unless the defendant has been properly
6 served in accordance with Federal Rule of Civil Procedure 4. *Direct Mails Specialists, Inc. v.*
7 *Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988). “Rule 4 is a flexible rule
8 that should be liberally construed so long as a party receives sufficient notice of the complaint.”
9 *Whidbee v. Pierce Cty.*, 857 F.3d 1019, 1023 (9th Cir. 2017).

10 Pursuant to Federal Rule of Civil Procedure 4(h)(1), a corporation served in a judicial
11 district of the United States must be served either “in the manner prescribed by Rule 4(e)(1) for
12 serving an individual” or “by delivering a copy of the summons and complaint to an officer, a
13 managing or general agent, or any other agent authorized . . . to receive service of process and . .
14 . by also mailing a copy” of the summons and complaint to the defendant. Fed. R. Civ. P.
15 4(h)(1)(A)-(B). Rule 4(e)(1) allows for service by “following state law for serving a summons in
16 an action brought in courts of general jurisdiction in the state where the district court is located
17 or where service is made[.]” Fed. R. Civ. P. 4(e)(1).

18 National CASA here moves to order alternative service on 3dASAP in accordance with
19 the law of Texas, the location of Defendant’s principal place of business and the “state . . .where
20 service is made” under Rule 4(e)(1). Under Texas law, service of process on a defendant
21 corporation is governed by the Texas Business Organizations Code. *AAA Navi Corp. v. Parrot-*
22 *Ice Drink Prod. of Am., Ltd.*, 119 S.W.3d 401, 403 (Tex. App. 2003) (citing to Tex. Bus. Corp.
23 Act, the former version of the Tex. Bus. Orgs. Code). The Code requires corporations to

1 maintain a registered agent and office and to notify the Texas Secretary of State of any change in
2 either the registered agent or office. Tex. Bus. Orgs. Code Ann. §§ 5.201 –.202. It provides for
3 service of process on a corporation’s registered agent or on the corporation’s president or vice
4 president. *Id.* at §§ 5.201(b), 5.255(1).

5 The Code also permits the Texas Secretary of State to act as “an agent of an entity for
6 purposes of service of process, notice, or demand” if “the registered agent of the entity cannot
7 with reasonable diligence be found at the registered office of the entity[.]” *Id.* at § 5.251. “The
8 use of reasonable diligence in attempting to serve a corporation’s agent is a prerequisite to
9 attempting service through the secretary of state.” *AAA Navi Corp.*, 119 S.W.3d at 401; *see also*
10 *Paramount Credit, Inc. v. Montgomery*, 420 S.W.3d 226, 230 (Tex. App. 2013) (strict
11 compliance with diligence requirement is required).

12 In determining the existence of reasonable diligence, the Court may consider “upon
13 whom the attempted service of process was made, where, when, how, and in what capacity.”
14 *Paramount Credit, Inc.*, 420 S.W.3d at 231 (finding a default judgment cannot be affirmed
15 unless such facts are “clear from the face of the record.”) There need not be an attempt to find
16 the registered agent at any location other than the corporation’s registered office. *BLS Dev., LLC*
17 *v. Lopez*, 359 S.W.3d 824, 826-27 (Tex. Ct. App. 2012). “As long as the record as a whole
18 shows that the registered agent could not with reasonable diligence be found at the registered
19 office, Section 5.251(1)(B) permits service on the secretary of state.” *Id.* (citation omitted). One
20 attempt at service on the registered agent at the registered office suffices to show reasonable
21 diligence “when it is clear from the record that further attempts would be futile.” *Paramount*
22 *Credit, Inc.*, 420 S.W.3d at 232; *accord BLS Dev., LLC*, 359 S.W.3d at 827-28 (citing cases
23 finding same).

1 National CASA here provides declarations of counsel, a process server, and Mr. Agnew.
2 *See* Dkts. 5-7. It shows attempted service of process on Ms. Pittard, 3dASAP’s registered agent
3 and sole officer and director, at 3dASAP’s Registered Office and that the process server was told
4 Ms. Pittard was out of the country for an indeterminate period of time. *See* Dkt. 7 (Declaration
5 of Non-Service of summons and petition in care of registered agent Glenda Pittard at registered
6 office, located at 4101 Dauphine Dr., Austin, TX, 78727, on November 11, 2021 at 6:50 p.m.;
7 stating: “I spoke with an individual who indicated they were the resident. ‘Glenda Pittard is out
8 of the country and probably will not return for a while.’”) This evidence, and the record as a
9 whole, suffices to show the reasonable diligence required under Texas state law to permit service
10 on 3dASAP via service on the Texas Secretary of State pursuant to Section 5.251(1)(B) of the
11 Texas Business Organizations Code. *Id.*; Dkt. 5, ¶¶3, 7 & Exs. 1-4 (including Declaration of
12 Non-Service of demand for arbitration in care of Ms. Pittard at the Registered Office address
13 outlining seven failed attempts at service between August 12th and September 21st of 2021);
14 Dkt. 6, ¶¶3-10 (outlining investigation into addresses associated with 3dASAP and Ms. Pittard
15 and evidence suggesting Ms. Pittard continued to be out of the country through late November
16 2021). *See, e.g., XIFIN, Inc. v. Diagnostic Lab Servs., LP*, C18-0890, 2019 WL 6118460, at *3
17 (S.D. Cal. Nov. 18, 2019) (finding an initial attempt to serve at the defendant’s principal place of
18 business and a subsequent attempt to find a current address constituted reasonable diligence and
19 service to the Secretary of State therefore proper under Texas law and compliant with Fed. R.
20 Civ. P. 4).

21 National CASA also points to a recently amended Texas court rule providing that, after
22 personal service has been attempted, a court may authorize service “in any other manner,
23 including electronically by social media, email, or other technology,” that the Court finds “will

1 be reasonably effective to give the defendant notice of the suit.” Tex. R. Civ. P. 106(b)(2). A
2 motion seeking such service must be supported by a sworn statement “listing any location where
3 the defendant can probably be found” and setting forth specific facts showing that personal or
4 registered mail service has been attempted without success. Tex. R. Civ. P. 106(b). *See also*
5 *Wilson v. Dunn*, 800 S.W.2d 833, 836 (Tex. 1990) (“Substitute service is not authorized under
6 Rule 106(b) without an affidavit which meets the requirements of the rule demonstrating the
7 necessity for other than personal service.”) “In determining whether to permit electronic service
8 of process, a court should consider whether the technology actually belongs to the defendant and
9 whether the defendant regularly uses or recently used the technology.” Tex. R. Civ. P. 106, Cmt.
10 to 2020 Change.

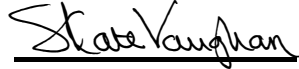
11 National CASA shows that personal service was unsuccessfully attempted and identifies
12 three email addresses associated with 3dASAP and/or recently used by Ms. Pittard. Dkt. 5, ¶11,
13 13-14 & Ex. 5; Dkt. 7. It asserts that, because Ms. Pittard appears to be conducting business
14 remotely, from an unknown address outside of the country, service by email is appropriate and
15 will provide further reassurance that 3dASAP will be provided reasonable notice. The Court, for
16 the reasons set forth above, finds service appropriately effectuated on the Texas Secretary of
17 State pursuant to Section 5.251(1)(B) of the Texas Business Organizations Code. The Court
18 further finds that, as requested by National CASA, alternative service by email pursuant to Rule
19 106(b)(2) would properly serve the purpose of giving 3dASAP additional notice of this suit.

20 CONCLUSION

21 National CASA’s *Ex Parte* Motion for Alternative Service, Dkt. 4, is GRANTED.
22 National CASA may effectuate service on 3dASAP by serving the Petition and Summons on the
23 Texas Secretary of State and via email to the three email addresses identified by National CASA

1 as associated with Ms. Pittard and 3dASAP. The Clerk is directed to send copies of this order to
2 the parties and to the Honorable Ricardo S. Martinez.

3 Dated this 14th day of December, 2021.

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5 S. KATE VAUGHAN
6 United States Magistrate Judge
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